

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR

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Office of the General Counsel to the Mayor

October 2, 2007

BY US MAIL AND E-MAIL



Washington, DC 200

Re: Freedom of Information Act Appeal

Dear 

This letter serves as the final determination of your administrative appeal to the Mayor, dated July 19, 2007 (the "Appeal"), under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-531 *et seq.* (2001 & 2006 Supp.) (the "DC-FOIA"). Our initial response to the Appeal, dated August 3, 2007 ("August 3 Determination") directed the Department of Youth and Rehabilitative Services ("DYRS") to deliver to the Appellant documents responsive to request numbers (8) and (9) of the original FOIA Request. DYRS is also reminded of its responsibility to make certain information available on the web. The August 3 Determination also remanded the matter to DYRS so that additional information could be gathered to assist with the determination on the remaining seven requests.

The basis for DYRS's denial of the remaining seven (7) FOIA requests is their position that the documents sought are juvenile social records which are considered by statute to be confidential and not open to inspection. See DYRS Letter Response to Appeal, dated July 27, 2007 at 1. The term "juvenile social records" is defined in D.C. Official Code § 16-2332(a). Appellant takes a position contrary to DYRS, arguing instead that § 16-2332(a) does not apply since the statute is intended to "regulate records developed by the Superior Court during the time it has jurisdiction over a juvenile matter." See Letter from  dated July 30, 2007 at 4. Appellant goes on to note that two of the children to which the FOIA requests relate were committed "without restriction" to DYRS for care and rehabilitation, and as such the court no longer had any jurisdiction to effect placement and treatment decisions.

The initial issue, then, is whether the documents sought by Appellant constitute juvenile social records. If so, such records automatically are deemed confidential and shall not be open to inspection, except in limited circumstances. D.C. Official Code § 16-2332(b). Where information is specifically exempted from disclosure (i.e., deemed

confidential) by statute, then that information also is exempt from disclosure under the DC FOIA. D.C. Official Code § 2-534(a)(6). The language used in § 16-2332(a) makes it clear that the statute applies only to records relating to proceedings over which the Family Division of the Superior Court has jurisdiction. In juvenile delinquency cases where the Family Division has committed a child to the custody and care of a public agency, the court loses its jurisdiction to the extent that it no longer has authority to make treatment and placement decisions with respect to that child. *In re P.S.*, 821 A.2d 905 (2003). Arguably, then, there is no longer a proceeding on which to base a determination that the records are juvenile social records. The records at issue here were created both before and after the juveniles in question were committed to the custody of DYRS, and are now being maintained by an agency after the court proceedings have ended. As such, D.C. Official Code § 16-2332(b) is inapplicable as a basis on which to make a determination for nondisclosure under § 2-534(a)(6) since the documents are no longer maintained by the Court and there is no active proceeding.

It is apparent, however, that the juvenile records in question, while no longer under the purview of the Family Division of the Superior Court, relate directly to the proceedings that took place in that forum. Given that maintaining confidentiality of juvenile records furthers the rehabilitation of young offenders by relieving them of the stigma of their misconduct,¹ it is perplexing why such juvenile records would lose their status simply because the records are now maintained by a public agency, DYRS, instead of a judicial body. Inasmuch as the affected juvenile has a continuing interest in ensuring that such records are not indiscriminately disclosed, two questions must be raised and resolved: (i) do juvenile social, case and law enforcement records as defined in § 16-2332, § 16-2331 and § 16-2333, respectively, retain their status as "confidential records" once an individual is committed to the custody of a public agency; and (ii) whether disclosure of juvenile records constitutes a clearly unwarranted invasion of the juvenile's privacy irrespective of the status of those records as either "social," "case," "law enforcement" or otherwise.

The questions require a balancing of the interests of the juvenile (and all similarly situated juveniles) against the public's right to inspect "public" documents maintained by government agencies. It is apparent that there is an overriding public interest in such records being kept confidential. This is evidenced for example by the notice that appears at the end of the final Commitment Orders, which committed the youths in question to the custody of DYRS:

NOTICE: Two years from the termination date of this order and any extension thereof, on motion of the Respondent or on Division's own motion, the Division shall vacate its order and

¹ See *Hamilton v. District of Columbia*, 152 F.R.D. 426, 428 (1994), citing *District of Columbia v. Cooper*, 483 A.2d 317 (1984).

findings and shall order the sealing, of all legal, social and law enforcement records in this matter. This action shall be taken provided the Respondent has not been adjudicated delinquent or in need of supervision or convicted of a crime during that period and no proceeding is pending seeking such adjudication.

The notice is based on D.C. Official Code § 16-2335(a), which states specifically that the records to be sealed include (i) juvenile case records, (ii) juvenile social records, (iii) juvenile law enforcement records or (iv) those of "any other agency active in the case." The fourth category extends protection to documents other than those specifically defined. Thus, while particular records might no longer fit the stated definition of juvenile social, case or law enforcement records, such records may nonetheless be within a class of juvenile records intended to be protected from public disclosure, in the absence of some overriding or compelling need for disclosure.

With respect to the privacy exemption, all information requested under DC FOIA that applies to a particular individual qualifies for consideration under the exemption contained in D.C. Official Code § 2-534(a)(2), where such information relates to personnel, medical and *similar* files. Maydak v. U.S. Department of Justice, 254 F. Supp.2d 23 (2003). "Similar" files have been deemed to include presentence reports, mental health assessments, records on inmates' institutional adjustment and progress, and academic records. Hines v. District of Columbia Board of Parole, 567 A.2d 909 (1989). The records and information in Hines are very similar to the juvenile records sought in this case. It is reasonable to conclude that there is an expectation of privacy in the instant records in that there are so many provisions in the D.C. Code extending to such records protection from disclosure such that an individual is more likely than not to expect that such records are deemed confidential. While the existence of such provisions may not be dispositive of the issue of whether disclosure would constitute an invasion of privacy, a "pledge of confidentiality should be given weight on the privacy side of the scale in accord with its effect on expectations of privacy." See Citizens for Environmental Quality, Inc. v. U.S. Department of Agriculture, 602 F. Supp. 534, 538 (1984).

Accordingly, DYRS' denial of the FOIA request is AFFIRMED based on two conclusions: (i) juvenile records retain their imprimatur of confidentiality even though such documents are no longer maintained by the Family Division of the Superior Court of the District of Columbia; and (ii) the individuals named in the FOIA request have a privacy interest in the juvenile records sought, and disclosure of such records would be a clearly unwarranted invasion of privacy as the record does not reflect a public interest that would override the individuals' right to have those records remain private.



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As the Appellant, you are free under the FOIA to commence a civil action against the District of Columbia government at any time in the District of Columbia Superior Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew T. Richardson, III".

Andrew T. "Chip" Richardson, III
Deputy General Counsel, EOM

cc: Kirra L. Jarratt, Esq.